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UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

BOARD OF TRUSTEES OF THE
 WESTERN METAL INDUSTRY
 PENSION FUND,

Plaintiffs,

v.

PACIFIC SHIP REPAIR &
 FABRICATION, INC., a California
 Corporation, Washington UBI No. 601 518
 674,

Defendant.

NO.

COMPLAINT FOR EQUITABLE RELIEF
 AND FOR MONETARY DAMAGES

I. PARTIES

1.1 Plaintiff Board of Trustees of the Western Metal Industry Pension Fund (Pension Fund) is a Taft-Hartley trust fund created for the purpose of providing retirement related benefits to employees and beneficiaries. It maintains its principal and administrative offices in Mercer Island, King County, Washington.

1.2 Upon information and belief, Defendant Pacific Ship Repair & Fabrication, Inc. (Pacific Ship Repair) is a California corporation with its principal place of business in San Diego, San Diego County, California. Upon information and belief, and at all relevant times, Pacific Ship Repair conducts business within this district through its facilities located

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1 in Bremerton, Kitsap County, Washington and in Everett, Snohomish County, Washington.
 2 Pacific Ship Repair has Participating Employees at both of its Bremerton and Everett
 3 facilities.

4 II. JURISDICTION AND VENUE

5 2.1 This Court has exclusive jurisdiction pursuant to §502(e)(1) of the Employee
 6 Retirement Income Security Act of 1974 (“ERISA”), codified at 29 U.S.C. §1132(e)(1).

7 2.2 Venue in this Court is proper pursuant to §502(e)(2) ERISA, codified at 29
 8 U.S.C. §1132(e)(2), and by agreement of the Parties.

9 III. FACTS

10 3.1 On August 14, 2017, on behalf of Pacific Ship Repair, David J. Moore,
 11 identifying himself as “President/CEO” executed an *Agreement by and between Pacific Ship*
 12 *Repair & Fabrication, Inc. and The Metal Trades Department of the AFL-CIO and the Puget*
 13 *Sound Metal Trades Council* (the Labor Agreement), effective July 1, 2017 through June 30,
 14 2020.

15 3.2 On June 8, 2022, on behalf of Pacific Ship Repair, David Bain, identifying
 16 himself as “Owner” executed an *Agreement by and between Pacific Ship Repair &*
 17 *Fabrication, Inc. and The Metal Trades Department of the AFL-CIO and the Puget Sound*
 18 *Metal Trades Council* (the Labor Agreement), effective June 8, 2022 through June 30, 2024.

19 3.3 The Labor Agreement’s scope includes:
 20
 21
 22

1.1 This Agreement shall cover all production, repair and maintenance employees within the bargaining unit in the employ of the Company signatory hereto, and shall apply to all work and activities of the Company in connection with the construction, conversion, repair or scrapping of any vessel within the state of Washington including, but not limited to, dredges, floating drydocks, offshore drilling vessels, barges, mobile drilling platforms, and all auxiliary equipment used in conjunction therewith, and any and all commercial fabrication, manufacturing, and commercial services of the Company located in the state of Washington. Any Unit employee directed by the Company to work at any other location shall remain covered by this Agreement.

3.4 By signing the Labor Agreement, Pacific Ship Repair agreed to make fringe benefit contributions to the Healthcare Trust and the Pension Fund:

27.1 The Company shall pay the amounts identified in Schedule "A" into jointly administered Health, Welfare, Dental, and Pension Trust Funds.

3.5 The Pension Fund is an intended beneficiary under the terms of the Labor Agreement.

3.6 By executing the Labor Agreement, Pacific Ship Repair is bound by the written terms of the Trust Agreement for the Pension Fund.

3.1 Pacific Ship Repair's obligations to the Pension Fund are set forth in Article IX, §§1 – 9 of the *Trust Agreement Governing the Western Metal Industry Pension Fund*, as Revised and Restated Effective December 3, 2012. Under the Pension Fund, Pacific Ship Repair agreed to, among other things:

- Submit its contributions by the date specified in the underlying collective bargain agreement or as set by the trustees;
- Submit to an audit of the company's payroll books and records as necessary for the administration of the Pension Fund;

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- Payment of liquidated damages of ten percent (10%) on all delinquent contributions and accrued interest on delinquent contributions at twelve percent (12%) per annum; and
- Payment of the Pension Fund's attorney fees (with a minimum of \$100.00) and costs of collection.

3.7 Upon information and belief, following execution of the Labor Agreement, Pacific Ship Repair employed employees in Washington to perform covered work subject to the Labor Agreement's scope.

3.8 However, Pacific Ship Repair did not provide complete monthly reporting of fringe benefit contributions to the Pension Fund nor full payment.

3.9 Pacific Ship Repair was delinquent with its reporting and payment of fringe benefit contributions to the Pension Fund for January 2023. On or about May 8, 2023, Pacific Ship Repair paid its \$3,901.87 in reported contributions but did so after the February 15, 2023 due date. Accordingly, Pacific Ship Repair was assessed \$392.19 in liquidated damages and \$107.19 in interest, which the company has failed and/or refused to pay.

3.10 For the months of January through September 2023, Pacific Ship Repair has either failed to report and pay its contributions, or paid its contributions after the monthly due date (15th of each month) as follows:

2023			
Work Month	Due Date	Payment Date	Days Late
January	2/15/2023	5/8/23	82
February	3/15/2023	6/2/23	79
March	4/17/2023	6/27/23	71
April	5/15/2023	7/19/23	65
May	6/15/2023	7/24/23	39
June	7/17/2023	8/22/23	36
July	8/15/2023	11/15/23	92
August	9/15/2023	11/15/23	61
September	10/16/2023	12/4/23	49

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3.11 Furthermore, Pacific Ship Repair has failed to provide remittance reports and contribution payments to the Pension fund for the covered hours worked by its employees in the months of October 2023 through current, each of which is now overdue and delinquent.

3.12 Pacific Ship Repair's delinquency is continuing and accordingly the Pension Fund expects its monetary damages to increase.

3.13 As of the date of this complaint, Pacific Ship Repair owes the Pension Fund an additional amounts of liquidated damages, accrued, pre-judgment interest due to non- or late-payment, plus additional amounts for attorney fees and costs for the entire delinquency period of January 1, 2023 through the present.

IV. CAUSES OF ACTION

First Cause of Action (Breach of Labor Agreement/Trust Agreement)

4.1 The Pension Fund realleges each and every allegation contained in ¶¶1.1 –3.13 above.

4.2 Pacific Ship Repair's failure to properly report and pay fringe benefit contributions constitutes breaches of the terms of the Labor Agreement, to which the Pension Fund is a beneficiary. Pacific Ship Repair's failure to fully pay fringe benefit contributions it reported also constitutes breach of the Trust Agreement, the terms of which Pacific Ship Repair agreed to when it signed the Labor Agreement and began participating in the Pension Fund benefit plans.

4.3 As a result of Pacific Ship Repair's breach, the Pension Fund has been damaged in an unknown amount to be proven at trial, representing delinquent fringe benefit

contributions, plus other ancillary charges including liquidated damages, prejudgment interest, attorney fees, and costs of collection.

**Second Cause of Action
(Violation of ERISA)**

4.4 The Pension Fund realleges each and every allegation contained in ¶¶ 1.1 – 4.3 above.

4.5 Pacific Ship Repair's failure to report and pay fringe benefit contributions constitutes a violation of §503(a)(3), §515 ERISA, codified at 29 U.S.C. §1132(a)(3), §1145.

4.6 As a result of Pacific Ship Repair's violations of ERISA, the Pension Fund has been damaged in an unknown amount to be proven at trial, representing delinquent fringe benefit contributions, plus other ancillary charges including liquidated damages, prejudgment interest, attorney fees, and costs of collection.

V. REQUESTED RELIEF

The Plaintiff Pension Fund respectfully requests the Court grant the following relief:

- A. Entry of an order directing Pacific Ship Repair to provide its delinquent remittance reports for October 2023 to the present to the Pension Fund;
- B. Judgment in favor of the Pension Fund against Pacific Ship Repair, in an amount to be determined at trial, representing past-due and delinquent fringe benefit contributions owed by Defendant Pacific Ship Repair pursuant to the terms of the labor and trust agreements to which Pacific Ship Repair is a party;
- C. Judgment in favor of the Pension Fund against Pacific Ship Repair, in an amount to be determined at trial, representing liquidated damages owed by Defendant Pacific Ship Repair pursuant to the terms of the labor and trust agreements to which Pacific Ship Repair is a party;
- D. Judgment in favor of the Pension Fund against Pacific Ship Repair, in an amount to be determined at trial, representing accrued prejudgment interest owed by Defendant Pacific Ship Repair pursuant to the terms of the labor and trust agreements to which Pacific Ship Repair is a party;

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- 1 E. An award of attorney fees of not less than \$5,000.00, plus costs of collection,
2 as authorized by the labor and trust agreements to which Pacific Ship Repair is
3 a party, and as authorized under ERISA;
4 F. An award of post-judgment interest as authorized under ERISA and the
5 applicable Trust Agreement; and
6 G. Any other such relief under federal law or as is just and equitable.

7 DATED THIS 5th day of February, 2024.

8 /s/ Noelle E. Dwarzski

9 Noelle E. Dwarzski, WSBA # 40041

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11 MORALES & JOSEPHSON, P.S.

12 Attorneys for Plaintiff Trusts

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